



# VOPA ADVISOR

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EDITION I

## MESSAGE FROM THE EXECUTIVE DIRECTOR

Colleen Miller



### MISSION OF VOPA

*Through zealous and effective advocacy and legal representation to:*

- ◇ *Protect and advance the legal, human, and civil rights of persons with disabilities;*
- ◇ *Combat and prevent abuse, neglect and discrimination;*
- ◇ *Promote independence, choice and self determination by persons with disabilities in the Commonwealth.*

At last, the legislative session has ended! As many of our readers know, the regular session of our General Assembly ended on March 13, 2004, but without the passage of a budget. The Governor immediately called the legislators back into special session, where the budget fight seemed to drag on and on. But finally, on May 7, 2004, the General Assembly passed a budget. Funding for programs for people with disabilities fared pretty well in this roller coaster of a budget year, although we could always hope for more. The legislature recognized the need for serious financial support for "Olmstead" work, funding many of the Governor's initiatives to assist people to move to integrated settings and adding considerably more funding than the Governor requested in the way of Medicaid waiver placement opportunities for people with mental retardation and developmental disabilities. Now the hard work begins, as state agencies and the community services system work to be ready for all the new

clients and programs.

On substantive legislation, the Virginia Office for Protection and Advocacy (VOPA) worked diligently to be available to assist policy makers as they considered the rights and needs of people with disabilities. VOPA offered a "legislative update" service on its website, with news of relevant pieces of law being revised every few days for constituents. If you used this service and have suggestions for us on how the updates can be more useful to you, please let us know. You can send us an e-mail at [generalvopa@dsa.state.va.us](mailto:generalvopa@dsa.state.va.us) to give us your feedback.

VOPA monitored and provided advice on a number of proposed bills as well, including bills concerning the Inspector General's Office, mental health parity, guardianship proceedings and guardianship organizations, voting rights, criminal penalties for the abuse of an incapacitated person, the Dis-

ability Commission and dozens of other bills. We were proud to have had the chance to work with so many dedicated advocacy groups and friends in the legislature on behalf of people with disabilities in the Commonwealth.

Our work is not done, however. Many bills were set aside until the next session in January 2005, or sent to Commissions or Task Forces for further development during the time between sessions. VOPA will be available to advise and educate on these efforts, as well.

If you know of any planning or evaluation projects that are underway that you think we should assist with, please do let us know.



## ABUSE DISCOVERED AT ASSISTED LIVING FACILITY

A Mechanicsville home for people with disabilities is believed to be abusing and neglecting its residents, according to a lawsuit filed in March. The Virginia Office for Protection and Advocacy (VOPA) has sued Brice's Villa, an assisted living facility, asking the Court to stop the home from abusing and neglecting its residents.

After a four-month investigation, VOPA uncovered evidence that residents of Brice's Villa had been physically abused by facility staff and other residents. Furthermore, the investigation revealed that residents' psychiatric medications, over

an extended period of time, were stolen and distributed to third parties. VOPA also discovered that Brice's Villa seriously neglected one resident's medical needs, resulting in the resident's death.

The lawsuit, filed in the Circuit Court for Hanover County, asks the Court to Order Brice's Villa to immediately cease its abuse and neglect, under state laws prohibiting such conduct.

"People with disabilities have the right to live in the community, and to do so without being

harmed," said Colleen Miller, VOPA's director. "VOPA was created to protect the most vulnerable Virginians, like the residents of Brice's Villa, from abuse, neglect and discrimination. This applies whether they live in state-run institutions or community placements."

The suit names Brice's Enterprises, Sylvia Lee, LaTaunya Dillard and Michael Fleming as defendants. Lee is the administrator and supervisor of Brice's Villa. Dillard is the Secretary/Treasurer of Brice's Enterprises, and the corporate operator of the facility. Fleming is an employee.

## VOPA INVESTIGATION IMPROVES PRIMARY CARE FOR RESIDENTS OF STATE-OPERATED MENTAL HEALTH FACILITY

Michael Gray, Staff Attorney

VOPA recently completed an in-depth investigation of the gangrene-related death of a patient at a state-operated mental health facility. Evidence discovered during VOPA's investigation indicated that the facility failed to provide adequate primary care services to the patient during the weeks leading up to his death.

As a result, the gangrenous condition had gone undetected until all possibility of treatment had passed. By the time the facility's physician realized the seriousness of the patient's condition and rushed him to a nearby emergency room, he had gone into cardiac/respiratory arrest. He died the next day without ever regaining consciousness.

VOPA's investigation turned up evidence showing that the patient displayed symptoms and lab test results from which the facility medical staff could have, and should have, detected his developing gangrenous condition. VOPA found that he was a victim of pa-

tient neglect.

VOPA used this investigation as a platform from which to seek systemic reform of the facility's primary care delivery system. VOPA worked with an expert consultant to develop recommendations designed to improve the overall quality of primary care services provided to the facility's residents, and to target the deficiencies VOPA identified during its investigation.

Among the measures VOPA recommended were policies requiring training in primary care practice for psychiatrists who have primary care responsibilities; a policy to ensure the proper review and analysis of abnormal lab results; improved medical screening policies for individuals who exhibit significant functional changes; and, a set of policies and procedures designed to improve the facility's detection and handling of intestinal bleeding cases.

The facility initially resisted the changes VOPA recommended, but subsequently agreed to implement

them. The facility has, since that time, provided VOPA with satisfactory evidence that it has effectively implemented all of VOPA's recommendations. VOPA will monitor the facility's continued compliance at random intervals.

This investigation points out the vulnerability of individuals who are involuntarily committed to state mental health facilities. These individuals are forced against their wishes into highly restrictive environments where they are almost totally dependent on the facility to provide and/or coordinate their primary health care. In addition, these individuals often find themselves stripped of the right to make even the most basic decisions regarding the health care they receive. In this largely state-created environment of coercion, dependency, and vulnerability, Virginia's mental health facilities have a legal and moral duty to ensure that their involuntary residents receive adequate and appropriate primary care services.

## VETERANS GAIN ACCESS TO ADVOCACY SERVICES

As a result of a historic agreement, veterans in the mental health unit of Hunter McGuire Medical Center will now have regular access to independent advocates for their rights. On Thursday, January 15, 2004, for the first time ever, staff from the Virginia Office for Protection and Advocacy (VOPA) met with patients of the hospital, to help them understand their rights and to assist them with advocacy concerns. VOPA trained staff at the hospital on May 5, 2004.

The meetings come as a result of an agreement reached in September 2003 between Hunter McGuire Medical Center and VOPA, allowing VOPA to meet with clients on a quarterly basis to conduct a "rights clinic." The Medical Center will also distribute information about VOPA to every

patient, upon admission to the hospital, and will post information in public areas concerning patients' rights, including the right to contact VOPA.



In June 2003, VOPA sued Hunter McGuire Medical Center when the hospital refused to allow the agency to contact patients to ensure their rights were being protected.

Through court-ordered mediation,

the parties were able to reach the momentous agreement, which also provides for VOPA to train Medical Center staff annually about the rights of people with mental illness in treatment facilities. The agreement assures patients' rights to request assistance from VOPA and outlines procedures for a patient to be able to contact the agency confidentially.

"We are very pleased with this agreement," said Colleen Miller, Executive Director for the Virginia Office for Protection and Advocacy. "Hunter McGuire is committed to the best for its patients, as this agreement clearly demonstrates. We look forward to a cooperative working relationship with the Medical Center and to serving our mutual clients."

## VOPA PREVAILS IN "READY FOR DISCHARGE" LITIGATION

**Jonathan Martinis, Managing Attorney**

VOPA's litigation against the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) has ended with VOPA receiving an injunction that will give it access to DMHMRSAS' "ready for discharge" list until 2006.

In an Order entered on April 2, 2004, Judge Richard L. Williams enjoined Dr. James Reinhard, Commissioner of DMHMRSAS to provide VOPA, on a monthly basis, with the names of those people deemed "ready for discharge" from DMHMRSAS' institutions and the names and contact information of their guardians. The Court also enjoined Dr. Reinhard to follow a procedure designed to prevent interference with VOPA's investigation of alleged neglect by DMHMRSAS. The injunction will run until January 31, 2006, ensur-

ing that VOPA will be able to complete its investigation.

The case began after VOPA received complaints alleging that DMHMRSAS did not create or implement appropriate discharge plans for people with mental illness who are "ready for discharge" from DMHMRSAS' institutions. After investigating the complaints and reviewing other materials, VOPA Director V. Colleen Miller declared that VOPA had probable cause to believe that DMHMRSAS had committed neglect and commenced a formal investigation, using the authority granted to VOPA by the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) and regulations, to determine whether such neglect had occurred. So that VOPA could contact and interview the persons who were the alleged victims of neglect,

VOPA requested that Dr. Reinhard provide it with the names and contact information of the people who were "ready for discharge." When Dr. Reinhard refused, VOPA filed suit in the United States District Court for the Eastern District of Virginia.

On February 18, 2004, Judge Williams entered a Preliminary Injunction requiring Dr. Reinhard to give VOPA the "ready for discharge" list. Additionally, because people are added to the list, VOPA asked the Court to order Dr. Reinhard to continue to provide it with the list, upon request.

On March 31, 2004, less than one month before the final hearing date on this case, the parties and Court agreed on an Order grant-

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## OVERVIEW OF EARLY AND PERIODIC SCREENING, DIAGNOSIS & TREATMENT (EPSDT) WHAT DOES IT MEAN FOR OUR CLIENTS?

Pamela J. Johnson, Staff Attorney

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is a comprehensive and preventive child health care program for individuals under 21, under the state's Medicaid Program. It offers four different types of screenings - medical, vision, hearing and dental. It covers regular and periodic exams, including any "medically necessary" services whether in the state plan or not and is available to Medicaid recipients. It is designed to "correct or ameliorate defects and physical and mental illnesses and conditions."

Services provided under EPSDT include:

- ✓ Comprehensive health and development history;
- ✓ Unclothed physical examination;
- ✓ Nutritional screening;
- ✓ Hearing and vision tests;
- ✓ Appropriate immunizations;
- ✓ Blood tests for lead poisoning at 12 and 24 months;
- ✓ Routine laboratory tests, such as blood and urine for anemia, diabetes and parasites;
- ✓ Age appropriate anticipatory guidance and patient education;
- ✓ Semi-annual dental check-ups and treatment for children age 3 and older; and
- ✓ Other services necessary to treat a condition found during an EPSDT examination.

EPSDT is a powerful tool for advocates because it is a MANDATORY Medicaid service. Because of long waiver waiting lists, child health advocates can obtain EPSDT services for children while they wait for an open slot in a waiver program. The state bears the responsibility for arranging screenings and treatment for children under age 21 while waiver beneficiaries and their families bear the primary responsibility

for follow through. Assessment tools are used just like in waiver screenings.

Importantly, more services can be provided under EPSDT, where waivers may not allow for the provision of a similar service.

### CASE EXAMPLE

We represented a 17 year-old quadriplegia and compromised bladder and bowel function, neck pain, spasticity and autonomic dysreflexia (causes sudden rises in blood pressure, profuse sweating, flushed skin, blurred vision, recurrent UTIs, bowel impaction, and other serious conditions).

This client had been receiving waiver services and private duty nursing (12 hours/day) through EPSDT since 2001. The client contacted VOPA when DMAS threatened to discontinue private duty nursing services because the client was allegedly medically stable.

VOPA learned that DMAS failed to contact her primary care physician (PCP) to determine whether the client had a regular or periodic exam as required under EPSDT (interperiodic screens). DMAS failed to obtain consent from the client's parents to obtain medical information needed to make a determination about her rehabilitation process or overall medical condition. DMAS used outdated information from one of the client's past PCPs to justify discontinuing nursing services.

VOPA argued that DMAS violated the periodicity schedules that are mandatory under the Medicaid Act. DMAS threatened to discontinue services without

having up-to-date medical information to show that the client no longer needed the nursing services to "ameliorate" her condition. The client's nursing services were restored.

### HOW TO OBTAIN SERVICES

Application for services must be made through the local Department of Social Services. In order to receive EPSDT services, a potential client must be eligible for Medicaid. Some of the information required to determine eligibility is:

- ✓ A physician's order;
- ✓ Letter of "medical necessity" from a physician, physical therapist, or other qualified personnel which shall include the following:
  - patient history
  - a diagnosis or prognosis requiring services
  - medical justification for service or item
  - description of the benefit to patient
  - length of time patient will need service or item;
- ✓ Product information - a description of how the product or service will uniquely fit the needs of the patient, including pictures of the patient using the item; and
- ✓ Prices from different manufacturers of a certain product or service that might fit the patient's needs.



**“READY FOR DISCHARGE”**

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ing VOPA's request. This case and injunction are the first of their kind - this was the first PAIMI case to hold that the failure to create or implement discharge plans is “neglect” and the first injunction to require an institution to provide a “ready for discharge” list.

VOPA has filed a Motion asking the Court to order DMHMRSAS to pay VOPA's attorney's fees and costs.

## SPEAKERS BUREAU

**Our staff is available to provide presentations and/or training sessions on disability-related rights that are addressed by our current goals and focus areas.**

**VOPA can also provide an exhibit and/or materials for fairs, conferences, etc.**

**Please contact us at 1-800-552-3962 or via e-mail at [generalvopa@dsa.state.va.us](mailto:generalvopa@dsa.state.va.us) to request a speaker, exhibit, or materials.**

**MTARS IS COMING...**

In early summer, the Virginia DD Network (which includes VOPA, the Virginia Board for People with Disabilities, and the Partnership for People with Disabilities) will undergo a federal Monitoring and Technical Assistance Review System (MTARS) by its mutual funding agency, the Administration on Developmental Disabilities (ADD). The MTARS process was developed jointly by federal officials, program representatives, and consumers in response to a shift in focus of federal policy from process to outcomes. MTARS is an administrative tool designed to institute change in ADD program monitoring by fostering partnerships and collaboration, involving consumers and peers, using measurable outcomes, and emphasizing and enhancing technical assistance. It increases opportunities for consumers and peers to participate in their review and assessment of each program. The simultaneous review of the entire DD Network is designed to provide a more comprehensive picture of the Developmental Disabilities program in the Commonwealth than would generally be afforded through site visits focusing on an individual program.

Virginia's site visit will take place the week of June 21 and will involve interviews with the Directors

of each program, representatives from each agency's staff, Board members and Advisory Councils; review of fiscal and other records as appropriate and an assessment of the extent of collaboration among the DD Partners. In addition, a public forum will be held that week to ensure public participation in the review process. This forum will be widely advertised. The overall goals for MTARS will be to answer the following questions: (1) Are Virginia's DD network programs doing what the law requires? (2) Are our programs making a difference in the lives of people with developmental disabilities? and (3) What kind of technical assistance, if any, do Virginia's DD Network agencies need to improve performance or compliance?

Virginia's DD Network partners look forward to the MTARS review being a positive and productive experience. The review will provide each agency an opportunity to highlight its accomplishments and to proactively and positively address any concerns that may be identified through the technical assistance and review process.

**Make your opinion known!! The Federal Administration on Developmental Disabilities' reviewers will hold a public hearing, to give every citizen of Virginia, the opportunity to comment on the work of VOPA and its two partners in DD work, the Virginia Board for People with Disabilities and the Partnership for People with Disabilities.**

**Details of the public hearing are being developed. There will be video locations in many parts of the state, and an “800” number for people to use if they cannot come to one of the video locations.**

**Please see our website at [www.vopa.state.va.us](http://www.vopa.state.va.us) for more details as the hearing date approaches.**

## VOPA'S ADVISORY COUNCILS

### Dee Vance, Resource Advocacy Unit

The Virginia Office for Protection and Advocacy (VOPA) has two advisory councils known as the Disabilities Advisory Council (DAC) and the Protection and Advocacy for Individuals with Mental Illness Advisory Council (PAIMI). The Councils' primary responsibility is to advise the protection and advocacy system and its Board on policies and priorities to be carried out in protecting individuals with disabilities.

As VOPA has grown, both Councils have dramatically improved their relationship with VOPA. They have been very supportive in the agency's increased commitment to providing quality legal services, both on an individual and systemic basis. Through the diligent work of the Councils' members, the Governing Board, and VOPA staff, both Councils have increased their membership and are operating almost at the maximum level allowed for member-

ship. However, we always welcome new interested individuals to come check us out.

At this time, Council members, the Governing Board, and VOPA staff would like to take this opportunity to thank everyone for their assistance in the recruitment effort. We look forward to the contributions of new members of our Advisory Councils.

## VIRGINIA DD NETWORK NEWS

In the last issue, we introduced you to the "DD network," the three organizations in Virginia that are federally funded under the Developmental Disabilities and Bill of Rights Act. The three DD Partners work together to accomplish goals established in the Act and to assure that individuals with developmental disabilities and their families have full access to community services and supports.

The Act requires the DD network to carry out all activities consistent with certain basic principles, the first of which is that "individuals with disabilities, including those with the most severe developmental disabilities, are capable of self-determination, independence, productivity, and integration and inclusion in all facets of community life...." An individual's right to self-determination, then, is one of the foundational principles of our work.

Self-determination can be a difficult concept for some people to accept. Historically, people with disabilities have been subjected to



more patronizing attitudes. Society views people with disabilities as those to be "taken care of." We rush to substitute our own notions of what is "best" for the individual, rather than allowing the individual to make his or her own choices.

Self-determination can take many forms. Sometimes it is something as simple as developing a system so that an individual with a significant disability can select what clothes to wear, even if that means choosing a striped shirt to go with plaid pants. Often, self-determination involves much more complicated choices, such as those involving medical attention, or choices with more serious consequences, including choosing where to live or who to hang out with. Promoting self-determination may mean assisting an individual with doing something that we would not

choose to do ourselves. But, even as we may disagree with a choice that someone makes, we must recognize the inherent value of being able to make choices.

Each of the DD network agencies supports the right of individuals with developmental disabilities, including the most severe developmental disabilities, to exercise self-determination. In future issues, we will address more of the foundational principles of our work and the projects that are important to our mutual missions.

*The DD Network Partner agencies include: the Virginia Board for People with Disabilities (Heidi Lawyer, Director), Virginia Office for Protection and Advocacy (Colleen Miller, Director), and the Partnership for People with Disabilities (Fred Orelove, Director).*



# Needs Mentors

## Youth Leadership Forum

**Are you an adult with a disability who is a positive role model with a big heart and a desire to cultivate future leaders?  
If yes, then the YLF needs YOU!**

**The YLF is an exciting and intensive leadership development program for high school students with disabilities. Twenty-five rising high school juniors and seniors will represent Virginia as Delegates at the weeklong forum at Christopher Newport University, July 19 through July 23, 2004.**

- ◆ **Participate in the Meet the Mentor Luncheon on Wednesday, July 21, 2004 from 11:00-2:00**
- ◆ **Provide support, inspiration, and mentorship to young leaders**

**By Mentoring, you are helping young leaders with disabilities reach their leadership potential.**

**Contact YLF Program Staff  
1-800-846-4464 (TTY/Voice)  
or visit the VBPD website at  
[www.vaboard.org](http://www.vaboard.org)**

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**VOPA**

Virginia's Protection and  
Advocacy System Serving  
Persons with Disabilities

**Commonwealth of Virginia  
Virginia Office for Protection  
and Advocacy  
1-800-552-3962**

**We're on the Web!**  
[www.vopa.state.va.us](http://www.vopa.state.va.us)

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